

AGREEMENT BETWEEN THE GOVERNMENT OF ROMANIA AND THE GOVERNMENT OF THE SYRIAN ARAB REPUBLIC ON THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS

The Government of Romania and the Government of the Syrian Arab Republic hereinafter referred to as the "Contracting Parties",

BEARING in mind the friendly and co-operative relations existing between the two States,

INTENDING to create and maintain favourable conditions for investments by investors of the State of one Contracting Party in the territory of the State of the other Contracting Party on the basis of sovereign equality and mutual benefit,

RECOGNIZING that the Agreement on the promotion and reciprocal protection of investments will be conducive to the stimulation of business initiative and will increase prosperity in both States,

HAVE AGREED as follows:

Article 1. Definitions

For the purpose of this Agreement:

(1) The term "investments" shall mean every kind of assets invested by investors of the State of one Contracting Party in the territory of the State of the other Contracting Party, in accordance with the national laws and regulations of the latter, and includes particularly, but not exclusively:

(a) movable and immovable property, as well as other rights in rem such as mortgages, privileges and guarantees;

(b) rights derived from shares, bonds or any other form of interest in companies or joint venture in the territory of the State of the other Contracting Party;

(c) intellectual property rights such as copyrights, patents, industrial designs, trade marks, trade names, as well as know-how and other rights recognized by the national laws of the Contracting Parties;

(d) business concessions under public law, including concessions to search for, extract or exploit natural resources, as well as all other rights conferred by law, by contract or by decision of the authority, in accordance with the law.

Any alteration of the form in which assets are invested or reinvested shall not affect their character as investment.

(2) The term "investors of the State of a Contracting Party" means:

(a) natural persons who have Romanian citizenship in respect of Romania and Syrian nationality in respect of the Syrian Arab Republic, in accordance with the laws and regulations of each State;

(b) legal persons or other economic entities established in accordance with the national laws and regulations of one Contracting Party and having their seat together with real economic activities in the State territory of that same Contracting Party.

(3) The term "without delay" shall be deemed to be fulfilled if a transfer is made within such period as is normally required by international finance practices.

(4) The term "returns" means the amounts yielded by an investment and in particular, though not exclusively, includes profits, dividends, interests, capital gains, royalties and fees.

(5) The term "territory of the State of a Contracting Party" means:

- In respect of Romania, the territory of Romania, including its territorial sea and the airspace above its territory and its territorial sea, over which Romania exercises its sovereignty, as well as the contiguous zone, continental shelf and exclusive economic zone over which Romania exercises its jurisdiction, respectively its sovereign rights, in accordance with its legislation and international law.

- In respect of the Syrian Arab Republic: The term Syria means, in accordance with international law, the territories of the Syrian Arab Republic, including its internal waters, territorial sea, the subsoil thereof and the airspace above them to which Syria has sovereign rights and other maritime areas to which Syria has the rights to exercise sovereign rights for the purposes of exploration, exploitation and conservation of natural resources.

Article 2. Promotion and Protection of Investments

(1) Each Contracting Party shall promote and create favourable conditions for investors of the State of the other Contracting Party to invest in its State territory and shall admit such investments in accordance with its national laws and regulations.

(2) Investments of investors of the State of either Contracting Party shall be accorded at all times fair and equitable treatment and shall enjoy adequate protection and security in the territory of the State of the other Contracting Party.

Article 3. National and Most Favored Nation Treatment

(1) Admitted investments of investors of the State of one Contracting Party effected within the territory of the State of the other Contracting Party in accordance with the national laws and regulations of the latter, shall receive from this latter Contracting Party, legal protection and fair treatment not less favourable than that accorded to its own investors or to investors of any third State which are in a comparable situation, whichever is more favourable.

(2) The national treatment and most favoured nation treatment provisions of this Agreement shall not apply to all actual or future advantages accorded by either Contracting Party by virtue of its membership of, or association with, a custom, economic or monetary union, a common market or a free trade area, to investors of its own, of Member States of such union, common market or free trade area, or of any other third State. Nor shall such treatment relate to any advantage which either Contracting Party accords to investors of a third State by virtue of a double taxation agreement or other agreements on a reciprocal basis regarding tax matters.

Article 4. Expropriation

Neither of the Contracting Parties shall take any measures of expropriation, nationalization or any other dispossession, having effect equivalent to nationalization or expropriation against the investments of an investor of the State of the other Contracting Party except under the following conditions:

a) the measures are taken for a public purpose and under due process of law;

b) the measures are not discriminatory;

c) the measures are accompanied by provisions for the payment of prompt, adequate and effective compensation. Such compensation shall amount to the fair market value without delay before the measure of dispossession became public knowledge. The market value shall be determined in accordance with international acknowledged practices and methods. The amount of the compensation shall be freely transferable in freely convertible currencies.

Article 5. Compensation for Losses

(1) Investors of the State of one Contracting Party whose investments in the territory of the State of the other Contracting Party suffer losses owing to war or other armed conflict, revolution, a state of national emergency, revolt, insurrection or riot in the territory of the State of the latter Contracting Party, shall be accorded by the latter Contracting Party fair and equitable treatment, as regards restitution, indemnification, compensation or other settlement.

(2) The treatment shall not be less favourable than that which the latter Contracting Party accords to its own investors or to investors of any third State, whichever is more favourable to the investors concerned.

Article 6. Transfer

(1) Without prejudice to any measure taken within a free trade area, customs union, common market or a similar economic organization to which one of the Contracting Parties is a Party, either Contracting Party shall guarantee within the scope of

its national laws and regulations in respect to investments by investors of the State of the other Contracting Party, to those investors, the transfer without delay of:

(a) profits, interests, dividends and other current income;

(b) funds necessary;

(i) for the acquisition of raw or auxiliary materials, semifabricated or finished products, or

(ii) to replace capital assets in order to safeguard the continuity of an investment;

(c) additional funds necessary for the development of an Investment;

(d) funds in repayment of loans;

(e) royalties or fees;

(f) earnings of natural persons, after paying all the due taxes and financial duties;

(g) the proceeds of sale or liquidation of the investment;

(h) compensation for losses;

(i) compensation for expropriation.

(2) Such transfer shall be made at the prevailing rate of exchange on the date of transfer with respect to current transaction in the currency to be transferred.

Article 7. Subrogation

If a Contracting Party or its designated agency makes a payment to any of its investors under a financial guarantee against noncommercial risks it has granted in respect of an investment in the territory of the State of the other Contracting Party, the latter Contracting Party shall recognize the transfer of any right or title of such an investor to the first Contracting Party or its designated agency and the subrogation of the first Contracting Party or its designated agency to any such right or title.

Article 8. Scope of Application

This Agreement shall apply to investments in the territory of the State of one Contracting Party, made in accordance with its national laws and regulations, by investors of the State of the other Contracting Party, whether prior to, or after the entry into force of the present Agreement. However, the Agreement shall not apply to disputes that have arisen before its entry into force.

Article 9. Other Obligations

Each Contracting Party shall observe any other obligation it has assumed with regard to investments made in its State territory by investors of the State of the other Contracting Party.

Article 10. Settlement of Disputes between an Investor of the State of One Contracting Party and the other Contracting Party

(1) Any dispute between an investor of the State of one Contracting Party and the other Contracting Party in connection with an investment in the territory of the State of the latter Contracting Party shall, as far as possible, be settled amicably through negotiations between the parties to the dispute.

(2) If the dispute cannot thus be settled within six months following the date on which the dispute was raised by one or other party, it may be submitted, upon request of the investor, either to:

(a) the competent court of the State of the Contracting Party in whose State territory the investment has been made; or

(b) the international arbitration to the provisions of paragraph (3);

Where an investor has submitted the case to a court of the State of the involved Contracting Party or to the international arbitration, the choice of one or other of these procedures shall be final.

(3) In case of international arbitration, the dispute shall be submitted, at the investor's choice, to:

(a) the International Center for Settlement of Investment Disputes (ICSID) established pursuant to the Convention on the Settlement of Investment Disputes between States and Nationals of the other States, done at Washington, on March 18, 1965, when each State, Party of this Agreement, has acceded thereto. As far as this provision is not fulfilled, each Contracting Party consents that the dispute be submitted to arbitration, under the rules of additional facility of the ICSID; or

(b) an ad hoc arbitral tribunal established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL).

(4) The arbitral tribunal shall take its decisions under the provisions of the present Agreement, the national laws of the Contracting Party involved in the dispute, including rules of conflict of law, as well as the principles of concerned international law.

(5) The arbitral decisions shall be final and binding for the parties in the dispute. Each Contracting Party shall execute them in accordance with its national legislation.

Article 11. Settlement of Disputes between the Two Contracting Parties Concerning the Interpretation and Application of this Agreement

(1) Any dispute between the Contracting Parties concerning the interpretation or application of this Agreement shall, as far as possible, be settled by consultation through diplomatic channels.

(2) If a dispute cannot thus be settled within six months, it shall, upon the request of either Contracting Party, be submitted to an ad hoc arbitral tribunal.

(3) Such tribunal comprises of three arbitrators. Within two months from the date on which either Contracting Party receives the written notice requesting for arbitration from the other Contracting Party, each Contracting Party shall appoint one arbitrator. Those two arbitrators shall, within further two months, together select a third arbitrator who is a citizen or national of a third State which has diplomatic relations with both States of the Contracting Parties. The third arbitrator shall be appointed by the two Contracting Parties as Chairman of the arbitral tribunal.

(4) If the arbitral tribunal has not been constituted within four months from the date of the receipt of the written notice for arbitration, either Contracting Party may, in the absence of any other agreement, invite the President of the International Court of Justice to appoint the arbitrator(s) who has or have not yet been appointed.

If the President is a citizen or national of the State of either Contracting Party or is otherwise prevented from discharging the said function, the appointment shall be made by the Vice-President and if the latter is prevented or if he is a citizen or national of the State of either Contracting Party, the next most senior member of the International Court of Justice who is not a citizen or national of the State of either Contracting Party shall be invited to make the necessary appointment(s).

(5) The arbitral tribunal shall determine its procedure. The tribunal shall reach its award in accordance with the provisions of this Agreement and the principles of international law recognized by both Contracting Parties.

(6) The tribunal shall reach its award by a majority of votes. Such award shall be final and binding on both Contracting Parties. The ad hoc arbitral tribunal shall, upon the request of either Contracting Party, explain the reasons of its award.

(7) Each Contracting Party shall bear the cost of its appointed arbitrator and of its representation in the arbitral proceedings. The relevant costs of the Chairman and the tribunal shall be borne in equal parts by the Contracting Parties.

Article 12. Consultation and Amendment

(1) Either Contracting Party may request that consultation be held on any matter concerning this Agreement. The other Contracting Party shall accord sympathetic consideration to the proposal and shall afford adequate opportunity for such consultations.

(2) This Agreement may be amended at any time, after its entry into force, if deemed necessary, by mutual consent.

Article 13. Entry Into Force, Duration and Termination

(1) The present Agreement shall enter into force three months after the date of the latest notification, by which the Contracting Parties shall have communicated, to each other in writing on the accomplishment of their internal procedures

of ratification. It shall remain in force for a period of ten years and shall continue in force thereafter unless terminated in accordance with paragraph 2 of this Article.

(2) Either Contracting Party may, by giving one years written notice to the other Contracting Party, terminate this Agreement at the end of the initial ten-year period or at any time thereafter.

(3) In respect of investments made prior to the date of termination of this Agreement become effective, the provisions of this Agreement shall remain in force for a further period of ten years from the date of termination of the present Agreement.

IN WITNESS, THEREOF the Undersigned, being duly authorized thereto by their respective Governments, have signed this Agreement.

Done in Damascus, on, duplicate, each in Romanian, Arabic and English languages, all texts being equally authentic. In case of difference of interpretation, the English text shall prevail.

FOR THE GOVERNMENT OF ROMANIA

Varujan -Vosgianian

Minister of Economy and Finance

FOR THE GOVERNMENT OF THE SYRIAN ARAB REPUBLIC

Dr. Amer Husni Lutfi

Minister of Economy and Trade